

# **CHAPTER 24-A**

## **ARMY REPORTS OF SURVEY**

### *Outline of Instruction*

#### **I. REFERENCES.**

- A. AR 37-1, Army Accounting and Fund Control, 30 Apr 91.
- B. AR 600-4, Remission of Indebtedness for Enlisted Members, 1 April 1998.
- C. AR 735-5, Policies and Procedures for Property Accountability, 31 January 1998.
- D. DA Pam 710-5, 15 April 1987, Unit Commander's Supply Handbook.
- E. DA Pam 735-5, 1 March 1997, Survey Officer's Guide.

#### **II. INTRODUCTION/PURPOSES OF THE REPORT OF SURVEY SYSTEM.**

- A. Applicability.
- B. Purposes.

### **III. ALTERNATIVES TO REPORTS OF SURVEY THAT COMMANDERS SHOULD CONSIDER.**

- A. Statement of Charges/Cash Collection Voucher (AR 735-5, para. 12-2) when liability is admitted and the charge does not exceed one month's base pay. (These two functions have been combined in the new DD Form 362)
- B. Cash sales of handtools and organizational clothing and individual equipment (AR 735-5, para. 12-2b).
- C. Unit level commanders may adjust losses of durable handtools up to \$100 per incident, if no negligence or misconduct is involved (AR 735-5, para. 14-25).
- D. Abandonment order (AR 735-5, para. 14-22) may be used in combat, large scale field exercises simulating combat, military advisor activities, or to meet other military requirements.
- E. Recovery of property unlawfully held by civilians is authorized (AR 735-5, para. 14-11) -- show proof it is U.S. property and do not breach the peace.
- F. AR 15-6 investigations and other collateral investigations can be used as a substitute for the report of survey investigation (AR 735-5, para. 13-26).
- G. Short Survey (AR 735-5, para. 13-22). If the commander determines that no negligence was involved in the damage to the property no report of survey is required as long as the approving authority concurs.

### **IV. THE REPORT OF SURVEY SYSTEM (AR 735-5, CH. 13 AND 14).**

- A. Initiating the Report of Survey.
  - 1. Active Army commanders will initiate the report of survey within 15 calendar days of discovering the loss or damage (USAR guideline is 75 days, ARNG guideline is 45 days).

2. The goal is a thorough investigation.
3. Mandatory initiation for a report of survey or AR 15-6 investigation. (AR 735-5, para. 13-2)
  - a. Individual refuses to admit liability and negligence or misconduct is suspected.
  - b. Anytime a higher authority or other DA regulations directs a report of survey.
  - c. Whenever a sensitive item is lost or destroyed.
  - d. Property is lost by an outgoing accountable officer, unless voluntary reimbursement is made for the full value of the loss.
  - e. When the amount of loss or damage exceeds an individual's monthly base pay, **even** if liability is admitted.
  - f. When damage to government quarter's or furnishings exceeds one month's base pay.
  - g. When the loss involves certain bulk petroleum products.
4. In the Active Army, reports of survey will normally be processed within 75 days (USAR guidelines provide 240 days, ARNG guidelines provide 150 days) [AR 735-5, para. 13-5].

B. Appointing Authority (AR 735-5, para. 13-16).

1. The appointing authority appoints report of survey investigating officers. The appointing authority also reviews all reports of survey initiated within his or her command or authority.
2. Generally, a lieutenant colonel (05) commander is both appointing and approval authority.

3. When approving authority is retained at the colonel (06) level or above, the approving authority may designate as appointing authority a lieutenant colonel (05) (or major in a lieutenant colonel billet) or DOD civilian employee in the grade of GS-13 (or a GS-12 in a GS-13 billet) or above.

C. Approving Authority (AR 735-5, para. 13-16).

1. The approving authority is normally a battalion (05) or brigade (06) commander, but may be any commander, chief of a HQDA staff agency, director of a MACOM staff office, chief of a separate MACOM activity in the grade of O-5 or higher, or a DA civilian employee in a supervisory position in the grade of GS-15 or above.
  - a. Does not have to be a court-martial convening authority.
  - b. Takes final action by authority of the Secretary of the Army.
2. Regardless of who initiates the report of survey, it will be processed through the chain of command of the individual responsible for the property at the time of the incident, provided the individual is subject to AR 735-5.
3. If negligence or no negligence is clearly established on the report of survey, the approving authority may recommend liability without appointing a surveying officer. The approving authority is then responsible for ensuring that the charges are properly computed and the individual held financially liable is properly notified.

D. Surveying Officer Qualifications (AR 735-5, para. 13-26).

1. The surveying officer will be senior to any person subject to potential financial liability, "except when impractical due to military exigencies."
2. The following individuals may be appointed as survey officer:

- a. Army commissioned or warrant officers;
  - b. Army NCOs E-7 and above;
  - c. Civilian employees GS-7 and above, or wage leader and wage supervisory employees;
  - d. In joint DOD service activities any assigned DOD commissioned or warrant officer, or NCO E-7 or above;
  - e. Foreign national employees (GS-7 equivalent or above) for reports of survey originating within Civilian Support Centers.
- 3. Consult AR 600-8-14, table 8-6 for the grade equivalency between military personnel and civilians employees.
  - 4. The investigation is the surveying officer's primary duty.
  - 5. The surveying officer should get a briefing from a judge advocate.

## V. VALUING THE LOSS.

- 1. Loss. Loss is the **loss of, damage to, or destruction of** government property under the control of the Army. This includes actual loss or loss of accountability.
  - a. Actual loss. Physical loss, damage or destruction of the property.
  - b. Loss of accountability. Due to the circumstances of the loss, it is impossible to determine if there has been actual physical loss, damage, or destruction because it is impossible to account for the property.

2. **Actual value** determination at the time of the loss is the **preferred method** (AR 735-5, App. B, para. B-2a).
  - a. Technician determines the condition of the item at the time of the loss or damage.
  - b. Determine a price value for similar property in similar condition sold in the commercial market within the last 6 months.
3. Depreciation.
  - a. If an appraisal is not possible or equitable, consider depreciation.
  - b. Compute the charge according to AR 735-5, App. B, para B-2b.
4. Limits on financial liability (AR 735-5, para. 13-39).
  - a. The **general rule** is that an individual will pay the amount of the loss, or one month's base pay, whichever is less.
    - (1) Charge is based upon the soldier's base pay **at the time of the loss**.
    - (2) For ARNG and USAR personnel, base pay is the amount they would receive if they were on active duty.
  - b. **Exceptions** to the general rule, there are times when personnel are liable for the **full amount of the loss**. (AR 735-5, para. 13-39a)
    - (1) Military personnel are liable for the full loss to the Government (less depreciation) when they lose, damage, or destroy personal arms or equipment.

- (2) Any person is liable for the full loss of public funds.
  - (3) Accountable officers will be held liable for the full amount of the loss.
  - (4) Any person assigned government quarters is liable for the full amount of the loss to the quarters, furnishings, or equipment as a result of gross negligence or willful misconduct of the responsible individual, his guests, dependents, or pets.
- 5. Collective Financial Liability: Two or more persons may be held liable for the loss as long as negligence or misconduct against each respondent is established.
  - (1) There is no comparative negligence.
  - (2) The financial loss is apportioned according to AR 735-5, Table 12-4.
  - (3) Collective Liability of Non-federal employees. (AR 735-5, Para. 13-39d) Divide the total dollar amount of the loss by the number of respondents. This is the maximum assessed, capped by 1 month's base pay for soldiers or DoD civilians.

B. Involuntary Withholding of Current Pay.

- 1. Members of the armed forces may have charges involuntarily withheld. 37 U.S.C. § 1007.
- 2. Involuntary withholding for civilian employees. 5 U.S.C. § 5512, AR 37-1, Chapter 15.
- 3. No involuntary withholding for the loss of NATO property (DAJA-AL 1978/2184).
- 4. No involuntary withholding for the loss of MFO property.

## **VI. IMPOSING LIABILITY.**

### **A. Responsibility For Property (AR 735-5, paras. 2-8 & 13-28)**

#### **1. Command Responsibility.**

- a. The commander has an obligation to insure proper use, care, custody, and safekeeping of government property within his or her command.
- b. Command responsibility is inherent in command and cannot be delegated. It is evidenced by assignment to command at any level.

#### **2. Supervisory Responsibility.**

- a. The obligation of a supervisor for the proper use, care, and safekeeping of government property issued to, or used by subordinates. It is inherent in all supervisory positions and is not contingent upon signed receipts or responsibility statements.
- b. If supervisory responsibility is involved, consider the following additional factors.
  - (1) The nature and complexity of the activity and how that affected the ability to maintain close supervision.
  - (2) The adequacy of supervisory measures used to monitor the activity of subordinates.
  - (3) The extent supervisory duties were hampered by other duties or the lack of qualified assistants.

#### **3. Direct Responsibility.**



- a. An obligation of a person to ensure the proper use, care, custody, and safekeeping of all government property for which the person has receipted.
- b. Direct responsibility results from assignment as an accountable officer, the receipt of formal written delegation, or the acceptance of the property on a hand receipt from an accountable officer.

4. Custodial Responsibility.

- a. An obligation of a person to ensure proper care, custody and safekeeping for property in storage or property awaiting issue or turn-in.
- b. Custodial responsibility results from assignment as a supply sergeant, supply custodian, supply clerk, or warehouse person, and is rated by and answerable directly to the accountable officer or the individual having direct responsibility for the property.

5. Personal Responsibility.

- a. The obligation of an individual for the proper use, care, and safekeeping of government property in their possession, with or without a receipt.

B. Negligence (AR 735-5, paras. 2-9 & 13-28b).

1. Simple negligence -- the failure to act as a reasonably prudent person would have acted under similar circumstances.

- a. A reasonably prudent person is an average person, not a perfect person. Consider also:

- (1) What could be expected of the person considering their age, experience, and special qualifications.

- (2) The type of responsibility involved.
- (3) The type and nature of the property. More complex or sensitive property will normally require a greater degree of care.

b. Examples of simple negligence.

- (1) Failure to do required maintenance checks.
- (2) Leaving weapon leaning against a tree while attending to other duties.
- (3) Driving too fast for road or weather conditions.
- (4) Failing to maintain proper hand receipts.

2. Gross negligence - an extreme departure from the course of action to be expected of a reasonable prudent person, all circumstances being considered, and accompanied by a reckless, deliberate, or wanton disregard for the foreseeable consequences of the act.

a. Reckless, deliberate, or wanton -

- (1) These elements can be express or implied.
- (2) Does not include thoughtlessness, inadvertence, or error in judgment.

b. Foreseeable consequences.

- (1) Does not require actual knowledge of actual results.
- (2) Need not foresee the particular loss or damage that occurs, but must foresee that some loss or damage of a general nature may occur.

c. Examples of gross negligence.

- (1) Soldier drives a vehicle at a speed in excess of 40 mph of the posted speed limit. Intentionally tries to make a sharp curve without slowing down.
- (2) Soldier lives in family quarters and has a child who likes to play with matches. Soldier leaves matches out where child can reach them.

3. Willful misconduct - any intentional or unlawful act.

- a. Willfulness can be express or implied.
- b. Includes violations of law and regulations such as theft and misappropriation of government property.
- c. A violation of law or regulation is not negligence per se.
- d. Examples of willful misconduct.

- (1) Soldier throws a tear gas grenade into the mess tent to let the cooks know what he thought about breakfast, and as a result, the tent burns to the ground.
- (2) Soldier steals a self-propelled howitzer, but he does not know how to operate it. Accordingly, his joy ride around post results in damage to several buildings.

C. Proximate cause - the cause which, in a natural and continuous sequence, unbroken by a new cause, produces the loss or damage, and without which the loss or damage would not have occurred. It is the direct, and immediate cause of the loss.

1. The damage arises out of the original act of negligence or misconduct.

2. A continual flow or occurrence of events from the negligent act or misconduct.
3. Use common sense.
4. Examples of proximate cause.
  - a. Soldier driving a vehicle fails to stop at a stop sign and strikes another vehicle after failing to look. Proximate cause is the soldier's failure to stop and look.
  - b. Soldier A illegally parks his vehicle in a no parking zone. Soldier B backs into A's vehicle. B did not check for obstructions to the rear of his vehicle. A's misconduct is not the proximate cause of the damage. Instead, B's negligent driving is the proximate cause.
5. Independent intervening cause - an act which interrupts the original flow of events or consequences of the original negligence. It may include an act of God, criminal misconduct, or negligence.

## **VII. RIGHTS OF THE RESPONDENT.**

- A. General Information.
  1. Respondent is term for a person recommended for financial liability.
  2. The report of survey form (DA Form 4697) contains a rights notice.
- B. Rights (AR 735-5, para. 13-32 and figure 13-11).
  1. An opportunity to examine the report of investigation.

2. Right to submit for consideration any statement the respondent desires to submit. Time limits for submitting rebuttal statements (AR 735-5, para. 13-33):
  - a. 7 calendar days -- when survey and investigation are hand delivered to the respondent.
  - b. 15 calendar days -- when respondent is unavailable but in the same country and the survey and investigation are mailed.
  - c. 30 calendar days -- when respondent is unavailable and in a different country and the survey and investigation are mailed.
3. Explanation of the consequences of a finding of gross negligence for a survey involving government quarters, furnishings and equipment.
4. Right to assistance of a JAG officer.

## **VIII. RELIEF FROM REPORTS OF SURVEY.**

- A. Appeals (AR 735-5, paras. 13-48, 13-49).
  1. **Appeal authority** is the next higher commander above the approving authority (normally the brigade commander).
  2. Respondent has 30 days to appeal unless he or she shows good cause.
  3. Two step process:
    - a. Submit request for reconsideration to approval authority.
    - b. Approving authority forwards the request for reconsideration to the appeal authority as an appeal.

4. If the approving authority denies reconsideration the following actions are required before forwarding to the appeal authority:
  - a. Prepare a memorandum giving the basis for denying the requested relief.
  - b. The approving authority must personally sign the denial.
5. Action by the appeal authority is final.

B. Reopening Reports of Survey (AR 735-5, para. 13-46).

1. Not an appeal.
2. Authority to reopen rests with the approval authority.
3. May occur:
  - a. As part of an appeal of the assessment of financial liability.
  - b. When a response is submitted to the survey officer from the person charged subsequent to the approving authority having assessed liability.
  - c. When a subordinate headquarters recommends reopening based upon new evidence.
  - d. When the property is recovered.
  - e. When the approving authority becomes aware that an injustice has been perpetrated against the government or individual.

C. Remission of Indebtedness (AR 735-5; AR 600-4).

1. Enlisted soldiers only.

2. Only to avoid extreme hardship.
  3. Only unpaid portions can be remitted. Suspend collection action long enough for the soldier to submit his request for remission of the debt.
  4. Must request reconsideration before submitting request for remission of indebtedness.
- D. Army Board for the Correction of Military Records (ABCMR) (AR 15-185).
- E. Civilian employees may avail themselves of the grievance/arbitration procedures.
- F. Lawsuits (with civilian counsel).

## **IX. JUDGE ADVOCATE'S ROLE.**

- A. For the Approving Authority (AR 735-5, para. 13-36).
1. Before approving authority takes action, a judge advocate must review the survey and investigation for legal sufficiency.
  2. The approving authority is not bound by the survey officer's or the judge advocate's recommendations.
- B. For the Appeal Authority (AR 735-5, para. 13-49b).
1. Before appeal authority takes action on an appeal, a judge advocate must review it.
  2. Judge advocate must be different than the one who reviewed the survey and investigation for the approval authority.

## **X. LEGAL ASSISTANCE ATTORNEY CONSIDERATIONS.**

### **A. Initially**

1. What stage in the process has been reached?
  - a. Statement of Charges/Cash Collection Voucher
  - b. Liability Recommended by Survey Officer
  - c. Liability Assessed by Approving Authority
  - d. Although held liable long ago, the soldier only now has found cause to question the assessment.
2. Does the client have all the documentation?

### **B. Analyze the facts**

1. Do they demonstrate by a preponderance?
  - a. Responsibility.
  - b. Negligence.
  - c. Proximate Cause.
2. What evidence is available to rebut?
3. Does the evidence better support a finding that another individual should be liable?

### **C. If a basis for liability is established?**



1. Can liability be shared?
  2. How was value of the loss calculated?
    - a. Consider actual value versus depreciation.
    - b. Do not always assume calculated correctly.
  3. Have caps on liability been applied?
  4. Is remission of indebtedness a possibility?
  5. Can the property be found?
- D. If liability is imposed but basis for liability is lacking.
1. Is there additional or new evidence?
  2. Has a request for reconsideration/appeal been filed?
  3. Has a petition for ABCMR review been considered?

## **XI. CONCLUSION.**

